



AB-251 Bar pilots: pilotage rates. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

NO. 251

Introduced by Assembly Member Bonta

January 30, 2017

An act to ~~add Section 1226.7 to the Health and Safety Code,~~ amend Sections 1154, 1156, 1156.5, 1157.5, 1170.1, 1190, and 1190.1 of, and to add Section 1190.2 to, the Harbors and Navigation Code, relating to ~~health and care facilities:~~ bar pilots.

LEGISLATIVE COUNSEL'S DIGEST

AB 251, as amended, Bonta. ~~Health and care facilities: dialysis clinics.~~ Bar pilots: pilotage rates.

Existing law establishes, in the Transportation Agency, a Board of Pilot Commissioners for Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun, and prescribes the membership, functions, and duties of the board with regard to the licensure and regulation of pilots. Under existing law, pilots licensed by the board have exclusive authority, to the extent not otherwise provided, to pilot vessels bound inward to, or outward from, those bays, in order to ensure the safety of persons, vessels, and property using those bays, and to avoid damage to those waters and surrounding ecosystems. Existing law requires the board to appoint and license the number of pilots that is sufficient to carry out the purposes of these provisions, based on certain considerations.

Existing law requires that every vessel inward or outward bound from those bays pay a bar pilotage fee of \$8.11 per draft foot of a vessel's deepest draft and fractions of a foot pro rata, adjusted as provided, and an additional charge of 73.01 mills per high gross registered ton, adjusted as provided.

This bill would revise the stated amounts of the bar pilotage fee and additional charge to reflect adjustments that have been made pursuant to existing law. The bill would make changes in the considerations required of the board when it is determining the number of pilots needed, and would repeal obsolete provisions and make other nonsubstantive changes in the bar pilotage laws.

~~but not limited to, the licensure and regulation of chronic dialysis clinics. Existing law requires the department to adopt regulations to implement these provisions, and requires those regulations to prescribe, among other things, minimum standards for providing the services offered. Violation of these provisions is a crime.~~

~~This bill would, for each fiscal year starting on or after January 1, 2019, require a chronic dialysis clinic to submit a report to the department detailing the total treatment revenue of the clinic, and the percentages of that total treatment revenue the clinic has expended on direct patient care services costs, health care quality improvements costs, federal and state taxes, facility license fees, and all other costs. The bill would, for each fiscal year starting on or after January 1, 2019, require a chronic dialysis clinic, if its direct patient care services costs, health care quality improvements costs, federal and state taxes, and facility license fees total less than 85% of the treatment revenue, to issue a rebate and reduction in billed amount to payers on a pro rata basis, as specified.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: ~~yes~~no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 1154 of the Harbors and Navigation Code is amended to read:*

1154. (a) The board is vested with all functions and duties relating to the administration of this division, except those functions and duties vested in the Secretary of ~~Business, Transportation and Housing~~: *Transportation*.

(b) The board's vested powers include the power to make and enforce rules and regulations that are reasonably necessary to carry out its provisions and to govern its actions. These rules and regulations shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. *Section 1156 of the Harbors and Navigation Code is amended to read:*

1156. (a) The board may appoint, fix the compensation of, and ~~from time to time~~ *periodically* adjust the compensation of, an executive director who is exempt from the civil service laws, and other employees as may be necessary. The executive director may perform all duties, exercise all powers, discharge all responsibilities, and administer and enforce all laws, rules, and regulations under the jurisdiction of the board, with the approval of the board, including, but not limited to, all of the following:

- (1) The administration of personnel employed by the board in accordance with the civil service laws.
- (2) To serve as treasurer of the board and keep, maintain, and provide the board with all statements of accounts, records of receipts, and disbursements of the board in accordance with the law.
- (3) The issuance and countersigning of licenses that shall also be signed by the president of the board.
- (4) The administration of matters and the maintenance of files pertaining to action taken against licenses issued by the board.
- (5) The administration of investigations of, and reporting on, a navigational incident or other matter for which a license issued by the board may be revoked or suspended.
- (6) To work with board members, staff, and other interested stakeholders to recommend improvements in the pilot training program.
- (7) Under the direction of the board, to coordinate with other state and federal agencies charged with protecting the environment and with the oil and hazardous chemical shipping industry.
- (8) Any other function, task, or duty as may reasonably be assigned by the president of the board, including, but not limited to, performing research and obtaining documents and other evidence for board activities, including

(b) The Secretary of ~~Business, Transportation and Housing~~ *Transportation* shall appoint one assistant director to serve in a career executive assignment at the pleasure of the secretary. The assistant director shall have the duties as assigned by the executive director, and shall be responsible to the executive director for the performance of his or her duties.

(c) The board may employ personnel necessary to carry out the purposes of this chapter. All personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for the executive director and the assistant director, who shall be exempt from state civil service. The board may fix the compensation of, and from time to time adjust the compensation of, any employees as may be necessary.

(d) All personnel of the board shall be appointed, directed, and controlled by the board, the executive director, or the board's authorized deputies or agents to whom it may delegate its powers.

(e) The board may contract and employ commission investigators. The board shall adopt regulations for the minimum standards for a commission investigator that shall include, but are not limited to, a basic knowledge of investigative techniques and maritime issues.

SEC. 3. Section 1156.5 of the Harbors and Navigation Code is amended to read:

1156.5. (a) The executive director shall serve at the pleasure of the board and shall be under the direct supervision of the board. The term of office to which the executive director is appointed is five years.

(b) The Secretary of ~~Business, Transportation and Housing~~, *Transportation*, or his or her designee, shall act as the executive director during the absence from the state or other temporary absence, disability, or unavailability of the executive director, or during a vacancy in that position.

SEC. 4. Section 1157.5 of the Harbors and Navigation Code is amended to read:

1157.5. ~~On or before April 15, 2010, and annually thereafter, the~~ *The* board shall submit to the Secretary of the Senate, the Chief Clerk of the Assembly, and the Secretary of ~~Business, Transportation and Housing~~ *Transportation*, *by April 15 of each year*, a report describing the board's activities for the preceding calendar year. The report shall include, but not be limited to, all of the following:

(a) The number of vessel movements across the bar, on the bays, and on the rivers within the board's jurisdiction.

(b) The name of each licensed pilot and pilot trainee, and the status of each person. If a person has had more than one status during the reporting year, each status and the length of time in that status shall be indicated. For the purposes of this section, "status" includes all of the following designations:

(1) Licensed and fit for duty.

(2) Licensed and not fit for duty.

(3) Licensed and on authorized training.

(4) Licensed and on active military duty.

(5) Licensed and on leave of absence.

(6) Licensed but license suspended.

(c) A summary of each report of misconduct or a navigational incident involving a pilot or pilot trainee, or other matters for which a license issued by the board may be revoked or suspended. For those cases that have been closed, the summary shall include a description of findings made by the incident review committee and of the resulting action taken by the board. For those cases that are still under investigation, the summary shall include a description of the reported incident and an estimated completion date for the investigation. For those closed cases involving a pilot who has been involved in a prior incident and a finding of pilot error had been made, the report shall also include a summary of that incident.

1170.1. In determining the number of pilots needed, pursuant to Section 1170, the board shall take into consideration the findings and declarations in Sections ~~1100 and 1101~~, 1100, 1101, and 1102, *the results of the study required by Section 1196.5, the 1986 manpower study adopted by the board*, the results of an audit made pursuant to, and the factors specified in, Section 1203, the industry's current economic trends, fluctuations in the number of vessel calls, the size of vessels, and whether the need for pilotage is increasing or decreasing.

SEC. 6. *Section 1190 of the Harbors and Navigation Code is amended to read:*

1190. (a) Every vessel spoken inward or outward bound shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) ~~Eight dollars and eleven cents (\$8.11)~~ (A) *Ten dollars and twenty-six cents (\$10.26)* per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of ~~73.01~~ *92.43* mills per high gross registered ~~ton as changed pursuant to law in effect on December 31, 1999. The mill rates established by this paragraph may be changed as follows:~~ *ton.*

~~(A)(i) On and after January 1, 2010, if the number of pilots licensed by the board is 58 or 59 pilots, the mill rate in effect on December 31, 2006, shall be decreased by an incremental amount that is proportionate to one-half of the last audited annual average net income per pilot for each pilot licensed by the board below 60 pilots.~~

~~(ii) On and after January 1, 2010, if the number of pilots licensed by the board is fewer than 58 pilots, the mill rate in effect on December 31, 2006, shall be adjusted in accordance with the method described in clause (i) as though there are 58 pilots licensed by the board.~~

~~(iii) The incremental mill rate adjustment authorized by this subparagraph shall be calculated using the data reported to the board for the number of gross registered tons handled by pilots licensed under this division during the same 12-month period as the audited annual average net income per pilot. The incremental mill rate adjustment shall become effective at the beginning of the immediately following quarter, commencing January 1, April 1, July 1, or October 1, as directed by the board.~~

~~(iv) On and after January 1, 2010, if, during any quarter described in this paragraph, the number of pilots licensed by the board is equal to or greater than 60, clauses (i) to (iii), inclusive, shall become inoperative on the first day of the immediately following quarter.~~

~~(B) There shall be an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the board to recover the pilots' costs of obtaining new pilot boats and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding costs for repair or maintenance. The incremental mill rate charge authorized by this subparagraph shall be identified as a pilot boat surcharge on the pilots' invoices and separately accounted for in the accounting required by Section 1136. Net proceeds from the sale of existing pilot boats shall be used to reduce the debt on the new pilot boats and any debt associated with the modification of pilot boats under this subparagraph. The board may adjust a pilot boat surcharge to reflect any associated operational savings resulting from the modification of pilot boats under this subparagraph, including, but not limited to, reduced repair and maintenance expenses.~~

~~(C) In addition to the incremental rate specified in subparagraph (B), the~~

(B) The mill rate established by this subdivision may be adjusted at the direction of the board if, after a hearing conducted pursuant to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, the board determines that there has been a catastrophic cost increase to the pilots that would result in at least a 2-percent increase in the overall annual cost of providing pilot services.

(2) A minimum charge for bar pilotage shall be six hundred sixty-two dollars (\$662) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of such transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage that passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Union Pacific Railroad Bridge to the north and Hunter's Point to the south. The rate for pilotage to or from the high seas to or from a point past the Union

specified by the board pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels. ~~This subdivision does not apply to the rates charged by inland pilots for their services.~~

~~(d) The board shall determine the number of pilots to be licensed based on the 1986 manpower study adopted by the board.~~

~~(e) Consistent with the board's May 2002 adoption of rate recommendations, the rates imposed pursuant to paragraph (1) of subdivision (a) that are in effect on December 31, 2002, shall be increased by 4 percent on January 1, 2003; those in effect on December 31, 2003, shall be increased by 4 percent on January 1, 2004; those in effect on December 31, 2004, shall be increased by 3 percent on January 1, 2005; and those in effect on December 31, 2005, shall be increased by 3 percent on January 1, 2006.~~

SEC. 7. *Section 1190.1 of the Harbors and Navigation Code is amended to read:*

1190.1. Every vessel that uses a pilot under this division while navigating the waters of Monterey Bay shall pay the rate ~~provided by subdivisions (a) and (e)~~ *determined pursuant to subdivision (a)* of Section 1190.

SEC. 8. *Section 1190.2 is added to the Harbors and Navigation Code, to read:*

1190.2. *There shall be an incremental rate of additional mills per high gross registered ton as is necessary and authorized by the board to recover the pilots' cost of obtaining new pilot boats and of funding design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding costs for repair or maintenance. The incremental mill rate charge authorized by this section shall be identified as a pilot boat surcharge on the pilots' invoices and separately accounted for in the accounting required by Section 1136. Net proceeds from the sale of an existing pilot boat shall be used to reduce the debt on the new pilot boats and any debt associated with the modification of pilot boats under this section. The board may adjust a pilot boat surcharge to reflect any associated operational savings resulting from the modification of pilot boats under this section, including, but not limited to, reduced repair and maintenance expenses.*

SECTION 1. ~~The Legislature finds and declares all of the following:~~

~~(a) Dialysis is a critical, lifesaving treatment for Californians suffering from end-stage renal disease.~~

~~(b) There are currently more than 66,000 dialysis patients and more than 570 licensed chronic dialysis clinics in California.~~

~~(c) Dialysis clinics in California frequently charge private health insurance plans four or more times as much, and sometimes 15 to 20 times as much, as they charge Medicare for the very same dialysis treatment, but do not spend sufficient funds on ensuring quality patient care.~~

~~(d) The disparity in amounts that dialysis clinics charge to Medicare and private health insurance plans does not enhance health outcomes, but it produces substantial profits for dialysis clinics while raising the cost of private health insurance for patients and all Californians.~~

~~(e) In recent years, considerable consolidation of the private dialysis clinic industry has prevented the marketplace from effectively ensuring that the clinics spend sufficient funds on quality patient care.~~

~~(f) Two multinational, for-profit companies operate or manage nearly three quarters of the dialysis clinics in California and treat more than 70 percent of dialysis patients nationwide. These companies can largely dictate the quality of patient care provided to the dialysis patients, as well as the pricing of such treatments.~~

~~(g) Regulation of the dialysis clinic industry is necessary to protect all Californians, including those suffering from end-stage renal disease, and to ensure that the focus of these clinics is on providing quality patient care.~~

SEC. 2. ~~Section 1226.7 is added to the Health and Safety Code, to read:~~

~~1226.7.(a) For purposes of this section, the following terms have the following meanings:~~

Federal Regulations as it read on December 31, 2016:

~~(2) "Chief Executive Officer" means the chief executive officer as that term is used in Section 494.180(a) of Title 42 of the Code of Federal Regulations as it read on December 31, 2016.~~

~~(3) "Direct patient care services costs" means costs claimed by a chronic dialysis clinic under lines one to 10, inclusive, 12, and 14 to 21, inclusive, of the Centers for Medicare and Medicaid Services Worksheet A of Form CMS-265-11, as it read on December 31, 2016, and similar costs as the department may identify through regulation.~~

~~(4) "Health care quality improvement costs" means costs required to maintain, access, or exchange electronic health information, support health information technologies, train nonmanagerial personnel engaged in direct patient care, and provide patient-centered education and counseling.~~

~~(A) Upon request by a chronic dialysis clinic, the department may deem other expenditures to have been made for health care quality improvements if all of the following apply:~~

~~(i) The chronic dialysis clinic shows that its expenditure was for activities or items designed to improve health quality and increase the likelihood of desired health outcomes in ways that are capable of being objectively measured and of producing verifiable results and achievements.~~

~~(ii) The chronic dialysis clinic actually paid the cost.~~

~~(iii) The cost was spent on services offered at the chronic dialysis clinic to chronic dialysis patients.~~

~~(B) The department may permit the chronic dialysis clinic to apply a health care quality improvement cost incurred in one year proportionally over a period not to exceed five years upon a finding that the chronic dialysis clinic has demonstrated that the cost is reasonably expected to provide health care quality improvements for that period.~~

~~(5) "Payer" means the person or persons who paid or are financially responsible for payments for a treatment provided to a particular patient, and may include the patient or other individuals, primary insurers, secondary insurers, and other entities, including Medicare and any other federal, state, county, city, or other local government payer.~~

~~(6) "Treatment" means each instance when the chronic dialysis clinic provides services to a patient for which costs are reported to the department under subparagraph (A) of paragraph (1) of subdivision (b).~~

~~(7) "Treatment revenue" means the total amount the chronic dialysis clinic collects from payers for treatments.~~

~~(b)(1) For each fiscal year starting on or after January 1, 2019, a chronic dialysis clinic shall submit to the department a report concerning the total treatment revenue of the chronic dialysis clinic for the fiscal year and the amounts and percentages of that total treatment revenue the chronic dialysis has expended on all of the following:~~

~~(A) Direct patient care services costs.~~

~~(B) Health care quality improvements costs.~~

~~(C) Federal and state taxes, and facility license fees paid pursuant to Section 1266.~~

~~(D) All other costs.~~

~~(2) The chronic dialysis clinic shall annually submit the report required by this subdivision to the department on a schedule, in a format, and on a form prescribed by the department, provided that the chronic dialysis clinic shall submit the information no later than 150 days after the end of its fiscal year. The chief executive officer or administrator of the chronic dialysis clinic shall personally certify that he or she is satisfied, after review, that the report submitted to the department under paragraph (1) is accurate and complete.~~

~~(c)(1) For each fiscal year starting on or after January 1, 2019, a chronic dialysis clinic shall calculate the costs described in subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (b) and the total treatment revenue. If the costs described in subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (b) total less than 95 percent of treatment revenue, the chronic dialysis clinic shall issue a rebate and a reduction in billed~~

on a pro-rata basis, in an amount that is sufficient to result in a ratio of at least 85 percent of costs described in subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (b) to total treatment revenue less rebates and reductions in billed amounts to payers issued in the same fiscal year, as follows:

(A)The chronic dialysis clinic shall issue the rebate or reduction in billed amount together with interest thereon of 10 percent per annum, which shall accrue from the last day of the fiscal year to which the rebate or reduction relates:

(B)Where a rebate must be paid or an amount billed but not yet paid must be reduced pursuant to this section, and more than one payer is responsible, the clinic shall divide and distribute the total required rebate or reduction in billed amounts among the payers consistent with the payers' relative obligations to pay for the treatment:

(C)The chronic dialysis clinic shall issue the rebate or reduction in billed amount no later than 210 days after the end of the fiscal year to which the rebate or reduction relates:

(2)For each fiscal year starting on or after January 1, 2019, a chronic dialysis clinic shall maintain and provide to the department, on a form and schedule prescribed by the department, a report of all rebates and reductions it issued under paragraph (1), including a description of each instance during the period covered by the submission when the rebate or reduction required under paragraph (1) was not timely issued in full, and the reasons and circumstances therefore. The chief executive officer or administrator of the chronic dialysis clinic shall personally certify that he or she is satisfied, after review, that all information submitted to the department under this paragraph is accurate and complete:

(d)It is the intent of the Legislature that California taxpayers not be financially responsible for implementation and enforcement of this section. In order to effectuate that intent, when calculating, assessing, and collecting fees imposed on chronic dialysis clinics pursuant to Section 1266, the department shall take into account all costs associated with implementing and enforcing this section:

SEC. 3.Nothing in this act is intended to affect health facilities licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code:

SEC. 4.The State Department of Public Health shall issue regulations necessary to implement this act no later than 180 days following its effective date:

SEC. 5.The provisions of this legislation are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application:

SEC. 6.No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution:



AB-251 Bar pilots: pilotage rates. (2017-2018)

Date	Action
11/30/18	From Senate committee without further action.
08/09/18	Re-referred to Com. on RLS. pursuant to Senate Rule 29.10(c).
08/07/18	Read second time. Ordered to third reading.
08/06/18	Read third time and amended. Ordered to second reading.
08/06/18	Read second time. Ordered to third reading.
07/05/18	Ordered to second reading.
07/05/18	From inactive file.
09/07/17	Ordered to inactive file at the request of Senator Wiener.
09/05/17	Read second time. Ordered to third reading.
09/01/17	From committee: Do pass. (Ayes 5. Noes 2.) (September 1).
08/21/17	In committee: Referred to APPR. suspense file.
07/13/17	Re-referred to Com. on APPR.
07/13/17	Withdrawn from committee.
07/13/17	From committee: Do pass and re-refer to Com. on HUMAN S. (Ayes 6. Noes 1.) (July 12). Re-referred to Com. on HUMAN S.
06/29/17	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.
05/10/17	Referred to Coms. on HEALTH and HUMAN S.
04/20/17	In Senate. Read first time. To Com. on RLS. for assignment.
04/20/17	Read third time. Passed. Ordered to the Senate. (Ayes 74. Noes 0. Page 1143.)
04/06/17	Read second time. Ordered to Consent Calendar.
04/05/17	From committee: Do pass. To Consent Calendar. (Ayes 17. Noes 0.) (April 5).
04/03/17	Re-referred to Com. on APPR.
03/30/17	Read second time and amended.
03/29/17	From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 13. Noes 0.) (March 28).
02/06/17	Referred to Com. on HEALTH.
01/31/17	From printer. May be heard in committee March 2.
01/30/17	Read first time. To print.